

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
BLAINE E. DAVIS,  
d.b.a. B. DAVIS CONSTRUCTION  
COMPANY,

Appellant,

**v.**

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 1038

## FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PER W. A. GISSBERG:

A formal hearing came on before Board members W. A. Gissberg (presiding) and Chris Smith on August 27, 1976 at Everett, Washington.

Appellant, Blaine E. Davis, appeared pro se; Keith D. McGoffin  
for Respondent.

Having heard the evidence, the Board makes the following

FINDINGS OF FACT

I

Pursuant to RCW 43.21B.260, Respondent has filed a certified copy of its Regulation 1 which we notice.

II

On May 14, 1976, Appellant obtained an open burning permit from the Lynnwood Fire Department which permitted him to "kindle and maintain an open fire . . . for the purpose of Residential Burning" on property owned by him and on which was situated a vacant residence which he intended to demolish. His plan, to rebuild a new apartment house on a portion of his property, required that three large trees be cut down. Accordingly, at the time that Appellant obtained his fire permit he advised the person issuing the same, one Lieutenant Meador, that his property was residential in nature, that he was clearing three trees therefrom and that the fire was to be for the purpose of burning limbs. Lieutenant Meador did not inquire, nor did Appellant volunteer, whether demolition of any structure was intended. Appellant was instructed, however, to read the "Regulations on Open Burning" which appeared on the back of the open burning permit. (Exhibit A-1)

III

Armed with the written permission of the local fire department, Appellant ignited two small piles of tree limbs and natural vegetation. The fires did not exceed four feet in diameter and three feet in height. In all respects Appellant abided by the regulations which appeared on the back of the permit.

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IV

Meanwhile, another fire inspector for the City of Lynnwood, Wade Warren, became aware that the city had not only issued a fire permit but also a building permit for a new apartment house for the subject property. He therefore proceeded to the site of the fires and upon ascertaining that Appellant intended to demolish the old residence thereon and build a new apartment house, revoked the "Residential" burning permit because it had been, he stated, "erroneously issued."

V

Thereafter Respondent served upon Appellant its Notice No. 12105 alleging a violation of its Article 1, Section 8.06(3), to which Appellant filed this appeal. That regulation makes certain land clearing burning unlawful:

. . . unless the Agency has verified that the average population density on the land within 0.6 miles of the proposed burning site is 2,500 persons per square mile or less.

Appellant did not request, nor did the Agency perform, a verification of the population density. However, the permit issued to Appellant, although it could (when properly marked) be utilized for the purpose of a residential or land clearing fire or a bonfire, advised the holder thereof to abide by the Regulations appearing on the reverse side of the permit. Nothing was printed on the permit to advise that a population density verification was required, but if the permit had been marked as a permit for land clearing, there was an admonition thereon that a permit was also needed from Respondent.

VI

Appellant filed an appeal to the Notice of Violation because a

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1 prior civil penalty imposed upon him by Respondent and upheld by this  
2 Board by a Stipulated Order in PCHB No. 961 stated, in part:

3 . . . PROVIDED, That the sum of \$125.00 is suspended on  
4 condition that no unexcused violations are caused by the  
5 Appellant for a period of one year from the date that this  
6 Order becomes final.

## 7 VII

8 Any Conclusion of Law hereinafter stated which may be deemed a  
9 Finding of Fact is hereby adopted as such.

10 From these Findings the Pollution Control Hearings Board comes  
11 to these

## 12 CONCLUSIONS OF LAW

### 13 I

14 We need not decide whether the open burning fires constituted  
15 "Land Clearing Burning" within the meaning of Section 8.06 or  
16 "Residential Burning" within the meaning of Section 8.09 of Respondent's  
17 Regulation 1. Rather, we conclude that since the fires were conducted  
18 by the owner of residential property in reliance upon a permit to do  
19 so which had been "erroneously" issued to him upon his truthful  
20 representations to questions posed by a governmental agency, justice  
21 demands that the citizen not be subjected to penalty. We believe  
22 that the doctrine of equitable estoppel should be applied against  
23 Respondent under the facts of this case in order to prevent a manifest  
24 injustice. To do so will not impair the exercise of its governmental  
25 powers. Shafer v. State, 83 Wn.2d 618. State ex rel. Shannon v.  
26 Sponburgh, 66 Wn.2d 135.

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II

Appellant did not violate Respondent's Regulation 1, Section 8.06(3).

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.


Therefore, the Pollution Control Hearings Board issues this

ORDER

The Notice of Violation is vacated.

DATED this 13<sup>th</sup> day of September, 1976.

POLLUTION CONTROL HEARINGS BOARD



W. A. GISSBERG, Member



CHRIS SMITH, Member